

Department of the Army, DoD

§ 536.82

(e) If the appellate authority upholds a final offer or authorizes an award on appeal from a denial of a claim, the notice of the appellate authority's action will inform the claimant that he or she must accept the award within 180 days of the date of mailing of the notice of the appellate authority's action or the award will be withdrawn, the claim will be deemed denied, and the file will be closed without future recourse.

§ 536.80 Payment of costs, settlements, and judgments related to certain medical malpractice claims.

(a) *General.* Costs, settlements, or judgments cognizable under 10 U.S.C. 1089(f) for personal injury or death caused by any physician, dentist, nurse, pharmacist, paramedic, or other supporting personnel (including medical and dental technicians, nurse assistants, therapists, and Red Cross volunteers of the Army Medical Department (AMEDD), AMEDD personnel detailed for service with other than a federal department, agency, or instrumentality and direct contract personnel identified in the contract as federal employees), will be paid provided that:

(1) The alleged negligent or wrongful actions or omissions occurred during the performance of medical, dental, or related health care functions (including clinical studies and investigations) while the medical or health care employee was acting within the scope of employment.

(2) Such personnel furnish prompt notification and delivery of all process served or received and other documents, information, and assistance as requested.

(3) Such personnel cooperate in the defense of the action on its merits.

(b) *Requests for contribution or indemnification.* All requests for contribution or indemnification under this section should be forwarded to the Commander USARCS for action, following the procedures set forth in this subpart.

§ 536.81 Payment of costs, settlements, and judgments related to certain legal malpractice claims.

(a) *General.* Costs, settlements, and judgments cognizable under 10 U.S.C. 1054(f) for damages for personal injury or loss of property caused by any attorney, paralegal, or other member of a legal staff will be paid if:

(1) The alleged negligent or wrongful actions or omissions occurred during the provision or performance of legal services while the attorney or legal employee was acting within the scope of duties or employment;

(2) Such personnel furnish prompt notification and delivery of all process served or received and other documents, information, and assistance as requested;

(3) Such personnel cooperate in the defense of the action on the merits.

(b) *Requests for contribution or indemnification.* All requests for contribution or indemnification under this section should be forwarded to the Commander USARCS, for action, following the procedures set forth in this subpart.

§ 536.82 Reopening an MCA claim after final action by a settlement authority.

(a) *Original approval or settlement authority (including TAJAG, TJAG, Secretary of the Army, or the Secretary's designees).* (1) An original settlement authority may reconsider the denial of, or final offer on, a claim brought under the MCA upon request of the claimant or the claimant's authorized agent. In the absence of such a request, the settlement authority may on his or her initiative reconsider a claim.

(2) An original approval or settlement authority may reopen and correct action on an MCA claim previously settled in whole or in part (even if a settlement agreement has been executed) when it appears that the original action was incorrect in law or fact based on the evidence of record at the time of the action or subsequently received. For errors in fact, the new evidence must not have been discoverable at the time of final action by either the Army or the claimant through the exercise of reasonable diligence. Corrective action may also be taken when an error contrary to the parties' mutual understanding is discovered in the original action. If the settlement or approval authority determines that their original action was incorrect, they will modify the action and, if appropriate, make a supplemental payment. The basis for a